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The 'Finding' That Befogs

By Daniel Schorr

WASHINGTON — Looming above the ambiguities of the Iran-contra affair is the larger issue of whether Congress can ever get a handle on clandestine operations in foreign countries conducted without its knowledge and sometimes in defiance of its laws.

The "smoking" document in this confrontation is the "Finding," the instrument invented by Congress to insure responsible behavior by intelligence agencies but used by the Administration to license misbehavior.

The "Finding" was born in 1974 when Congress recoiled from the Central Intelligence Agency's machinations and amended the Foreign Assistance Act to state that no money could be spent for C.I.A. operations abroad "unless and until the President finds that each such operation is important to the national security." The purpose was to insure that the President personally approved every covert operation in advance and would keep Congress informed. But what was intended to guarantee compliance with the law has been used in this Administration to circumvent it.

"Under an appropriate finding," said Vice Adm. John M. Poindexter's memorandum of Jan. 17, 1986, "you could authorize the C.I.A. to sell arms to countries outside of the provisions of the law and reporting requirements for foreign military sales." Later that day, Mr. Reagan signed a document that began "I hereby find," authorized arms sales to Iran as "important to national security" and instructed the Director of Central Intelligence, William J. Casey, to "refrain from reporting the Finding to Congress ... until I

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otherwise direct." Eight days earlier, on Jan. 9, another "Finding" directed the C.I.A., in the face of a Congressional ban on military aid to the contras, to provide them with intelligence information and equipment because the President deemed that "important to the national security."

The Iran "Finding," the first ever to be officially disclosed, was notable for claiming the magical power to legalize what had already happened — Israeli arms sales to Iran the previous year. Indeed, as originally drafted in November 1985, by Stanley M. Sporkin, the C.I.A.'s general coun-

Legalese hides covert action.

sel, the "Finding" said, "Prior actions taken by Government officials are hereby ratified." That was because the C.I.A. had already been involved in arranging one arms shipment. Mr. Sporkin, now a Federal district judge, argued, in a closed session of the Senate Intelligence Committee, that since the President can grant pardons for violation of the law, he can, by "Finding," declare actions to be legal after the fact.

The law also requires the "Findings" to be reported to Congressional intelligence committees in advance or "in a timely fashion." When Mr. Casey was raked over the coals before the Senate Intelligence Committee in 1984 for failing to give notice of the mining of Nicaragua's harbors, he was obliged to give a pledge, in writing, that henceforth "timely" no-

tice would mean no more than 48 hours. That pledge, says Judge Sporkin, was overridden by the "Finding" he drafted as C.I.A. counsel. Indeed, the Administration's position seems to be that a "Finding" can override anything — agreements, executive orders, laws, whatever.

The "Finding" on Iran has never been rescinded, although Mr. Reagan has stated that he has no current plans to sell arms. When the House Foreign Affairs Committee recently asked whether the arms embargo still applied to Iran under the terms of the Anti-Terrorism Act of 1986, the State Department replied, in writing, that this "determination remains in effect," but added the following parenthetical reservation: "(The foregoing is, of course, without prejudice to the authority of the Executive Branch to carry out transfers of defense articles under other legal authorities, such as pursuant to special intelligence Findings.)"

That position will not go uncontested by Congress. Senator Arlen Specter, a Republican member of the intelligence committee, said that the President's authority in the conduct of foreign affairs comes up against Congress's power to determine how money will be spent. He added that unauthorized use of money — as in the siphoning of Iranian arms sale profits, ostensibly to aid the Contras — may represent a "fraudulent conversion of Government funds," subject to criminal penalties.

Congress invented the "Finding" to keep "rogue elephant" intelligence agencies from going off on cover capers of their own. That safeguard is undermined when agencies and officials can cover their tracks with retroactive Presidential authorization. The greater problem is that of a rogue President who is willing to preside over such national misadventures. □